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DEVELOPMENT, LLC, PUKALANI GOLF
CLUB, LLC, KG MAUI DEVELOPMENT, LLC,
MILILANI GOLF CLUB, LLC, QK HOTEL, LLC,
and OR HOTEL, LLC ("KG PARTIES")

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

SPORTS SHINKO CO., LTD.,

Plaintiff,

vs.

QK HOTEL, LLC, et al.,

Defendants,

and

CV 04-00124 ACK-BMK

CV 04-00125 ACK-BMK

CV 04-00126 ACK-BMK

CV 04-00127 ACK-BMK

CV 04-00128 ACK-BMK

CONSOLIDATED CASES

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MAY 11 2007

at 4 o'clock and 10 min. PM
SUE BEITIA, CLERK

LODGED

MAY 09 2007
3:50 PM
CLERK, U.S. DISTRICT COURT
DISTRICT OF HAWAII

FRANKLIN K. MUKAI, et al.,
Third-Party Plaintiffs,

vs.
SPORTS SHINKO (USA) CO., LTD.,
et al.,

Third-Party Defendants,

and
SPORTS SHINKO (HAWAII) CO.,
LTD., et al.,

Third-Party Defendants/
Counterclaimants,

vs.
QK HOTEL, LLC, et al.,

Third-Party Counterclaim
Defendants.

AND CONSOLIDATED CASES

**STIPULATION REGARDING
COSTS; ORDER**

STIPULATION REGARDING COSTS

The Sports Shinko Parties,¹ Franklin Mukai (“Mukai”) and the KG Parties,² by their undersigned counsel, hereby stipulate as follows with respect to the recovery of costs incurred in D. Hawaii CV Nos. 04-00125 ACK-BMK, 04-00126

¹ The “Sports Shinko Parties” are Sports Shinko Co., Ltd., Sports Shinko (USA) Co., Ltd., Sports Shinko (Hawaii) Co., Ltd., Sports Shinko (Kauai) Co., Ltd., Sports Shinko Resort Hotel Corporation, Sports Shinko (Waikiki) Corporation, Sports Shinko (Mililani) Co., Ltd., and Sports Shinko (Pukalani) Co., Ltd.

² The “KG Parties” are KG Holdings, LLC, QK Hotel, LLC, OR Hotel, LLC, Pukalani Golf Club, LLC, KG Maui Development, LLC, Mililani Golf Club, LLC, Kiahuna Golf Club, LLC and KG Kauai Development, LLC.

ACK-BMK and 04-00128 ACK-BMK (collectively, the “Dismissed Cases”) by the KG Parties:

WHEREAS pursuant to Miles v. California, 320 F.3d 986 (9th Cir. 2003), when a case is dismissed for lack of subject matter jurisdiction, costs may not be recovered pursuant to Rule 54(d); and

WHEREAS the “court may order the payment of just costs” when an action is dismissed for lack of subject matter jurisdiction pursuant to 28 U.S.C. § 1919, accord, Miles, supra; and

WHEREAS separate judgments were filed in the Dismissed Cases on April 10, 2007, effectuating the dismissal, without prejudice, of the Dismissed Cases for lack of subject matter jurisdiction; and

WHEREAS on April 19, 2007, Mukai filed motions to alter or amend judgment in the Dismissed Cases, which motions are now pending before the Court; and

WHEREAS pursuant to the Stipulation re Consolidation for Discovery and Trial and Order filed on June 22, 2004, the Dismissed Cases were consolidated with D. Hawaii CV Nos. 04-00124 ACK-BMK and 04-00127 ACK-BMK (collectively, the “Pending Cases”); and

WHEREAS the Pending Cases are still pending before this Court; and

WHEREAS on April 24, 2007, Sports Shinko (USA) Co., Ltd. and its subsidiaries have filed a case entitled Sports Shinko (USA) Co., Ltd., et al. v. KG Hawaii LLC, et al., Hawaii 1st Cir. Civ. No. 07-1-0734-04 EEH, which restates the claims stated in the Dismissed Cases (“State Court Action”); and

WHEREAS the KG Parties seek to recover their “just costs” incurred in connection with the Dismissed Cases pursuant to 28 U.S.C. § 1919, which the KG Parties take to mean, in this instance, certain costs incurred in connection with the KG Parties’ Motion to Dismiss CV Nos. 04-00125 ACK-BMK, 04-00126 ACK-BMK and 04-00128 ACK-BMK For Lack of Subject Matter Jurisdiction filed on November 16, 2006 (“Motion to Dismiss”), which was granted by order filed on April 5, 2007.

NOW THEREFORE the parties stipulate and the Court orders as follows:

1. The KG Parties may not recover their costs for the Dismissed Cases pursuant to Rule 54(d) of the Federal Rules of Civil Procedure and may only seek to recover costs pursuant to 28 U.S.C. § 1919.

2. The KG Parties may file a motion to recover costs pursuant to the procedure set forth in Local Rule 54.2 of the Rules of the United States District Court for the District of Hawaii. Said motion shall be due within 30 days after the

ruling on Mukai's Motions to Alter or Amend Judgments filed April 19, 2007.

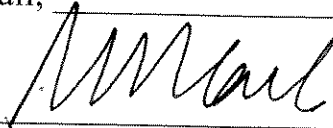
The SS Parties reserve the right to oppose the motion.

3. The prevailing part(ies) in the State Court Action may recover costs incurred in the Dismissed Cases that are not recovered by KG in its cost motion to be filed pursuant to this stipulation. Callicrate v. Farmland Industries, Inc., 139 F.3d 1336 (10th Cir 1998). The SS Parties and the KG Parties agree to assert no position inconsistent with the foregoing in the State Court Action.

4. The SS Parties agree that by seeking to recover certain costs and not others in connection with the cost motion to be filed by the KG Parties pursuant to this stipulation, the KG Parties have not waived or otherwise impaired their entitlement to recover costs in the Dismissed Cases in the State Court Action if the KG Parties are prevailing parties in those action(s).

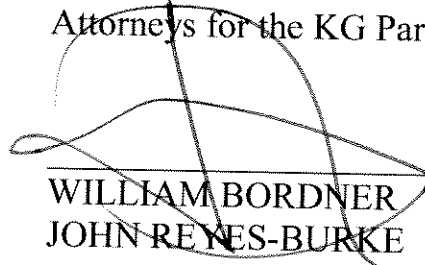
5. The SS Parties agree that nothing in this stipulation shall in any way impair any right that Mukai may have to recover costs in either the United States District Court for the District of Hawaii or the Circuit Court of the First Circuit of the State of Hawaii. Likewise, Mukai agrees that nothing in this stipulation shall in any way limit the arguments or positions the SS Parties may assert with respect to costs in either this action or the State Court Action.

DATED: Honolulu, Hawaii, MAY 9 2007



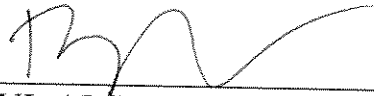
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APPROVED AND SO ORDERED



THE HONORABLE BARRY M. KURREN
UNITED STATES MAGISTRATE JUDGE

STIPULATION RE COSTS; ORDER; Sports Shinko Co., Ltd., v. QK Hotel, LLC, et al., etc., D. Hawaii CV No. 04-00124 ACK-BMK and consolidated cases